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NECESSITY OF ENDING THE ECONOMIC, COMMERCIAL AND FINANCIAL EMBARGO IMPOSED BY THE UNITED STATES OF AMERICA AGAINST CUBA

Letter dated 25 October 1991 from the Chargé d'affaires a.i. of the Permanent Mission of Cuba to the United Nations addressed to the Secretary-General

A few days ago, after the General Assembly had unanimously approved the inclusion in the agenda of the forty-sixth session of the supplementary item entitled "Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba" - now agenda item 142 - the Government of the United States engaged in a series of intense démarches with other countries in an effort to ensure rejection of the just demand of Cuba that it put an end to that illegal, inhuman and immoral policy.

One of the most unusual arguments marshalled by the United States Government in the course of those démarches is its repeated claim that the United Nations General Assembly is not an appropriate forum for consideration of the question referred to in agenda item 142. It further maintains that the United States will regard any consideration of that item by the General Assembly as interference in its internal affairs, thus wrongly assuming the role of the aggrieved party, whereas it is not a bit upset by its own attempt to impose its wishes on others through force and coercion. But it reaches the height of hypocrisy - or perhaps it lets its imagination run riot - when it asserts that the criminal policy of imposing on the Cuban people the social, economic and political system that is to Washington's taste, is in conformity with international law. That assertion may be presumed to mean that the United States Government regards its policy decisions as having force of law for the rest of the world. In any case, nothing could be more ludicrous.

The document annexed to this letter contains a summary of the factors indicating that the economic, commercial and financial embargo imposed by the

United States of America against Cuba constitutes a gross violation of the Charter of the United Nations and of international law. Consequently, I would be grateful if you could have this letter and its annex circulated as a document of the General Assembly under agenda item 142.

(Signed) Carlos ZAMORA RODRIGUEZ
Ambassador
Alternate Permanent Representative

ANNEX

The United States has boasted of the economic injury caused to Cuba by its preventing any commercial, tourist or financial relations "with the country that, by reason of geography and history otherwise would be its major trading partner". (President's Report to Congress on Measures to Enforce Restrictions, p. 5 (1989)). Not content with exercising even this extraordinarily coercive power, the United States has sought to impose the most extensive extraterritorial application of its embargo against Cuba.

The major respects in which such extraterritoriality is applied have been detailed in document A/46/193/Add.7 of 12 September 1991. The present document demonstrates that by imposing the embargo extraterritorially, the United States is acting in violation of settled principles of international law.

It bears emphasis at the outset that, by its assertions of extraterritorial jurisdiction, the United States is seeking the economic isolation of Cuba which it cannot achieve through the voluntary cooperation of third countries. The Member States of the United Nations do not themselves maintain an embargo against Cuba. Nor has any international or regional organization authorized an embargo, the Organization of American States having withdrawn its sanctions against Cuba - adopted under United States pressure in 1964 - more than 15 years ago.

By none the less vigorously seeking the extraterritorial application of its embargo, the United States has exceeded the confines of its national jurisdiction under international law and has violated the sovereignty of other States as well as that of Cuba. This is so even without reference to the illicit purpose to coerce Cuba into adopting an economic and political system more to the liking of the United States. That the purpose of the United States itself is unlawful makes the United States' excessive claim of international jurisdiction even more objectionable.

The Member States of the United Nations repeatedly have rejected the claim of the United States of extraterritorial jurisdiction for its embargo laws on grounds fully applicable to the Cuban embargo - although this has not deterred the United States from forcefully pursuing the latter. Thus, the European Community rejected the United States position when, in 1982, the United States imposed an embargo which, though limited in the range of goods covered, was similar in its extraterritorial reach to the Cuban embargo. The United States acted in supposed response to the embargoed country's alleged interference in the internal affairs of another State. The Council of Ministers of the European Communities delivered a note advising the United States that "the European Community considers the United States measures contrary to international law", and also submitted comments from the Commission of the European Communities, concluding that:

> "The United States measures, as they apply in the present case, are unacceptable under international law because of their extraterritorial aspects. They seek to regulate companies not of United States nationality in respect of their conduct outside the United States and particularly the handling of property and technical data of these companies not within the United States."

(Note of the Council of Ministers of the European Communities and Comments of the Commission of the European Communities (1982), reprinted in Lowe, ed. Extraterritorial Jurisdiction, An Annotated Collection of Legal Materials 197 (1983)).

That United States origin goods or technical data might be involved was of no consequence, since "goods and technology do not have any nationality and there are no known rules under international law for using goods or technology situated abroad as a basis for establishing jurisdiction over the persons controlling them". The United States embargo therefore "clearly infringes the principle of territoriality", which "is a fundamental notion of international law". (Comments of the Commission of the European Communities (1982)).

The courts of several nations have condemned the United States' assertion of extraterritorial jurisdiction on these grounds. (See, for example, American President Lines v. China Mutual Trading Co., 1953 A.M.C. 1510, 1526 (Hong Kong Sup. Ct.) and Moens v. Ahlers North German Lloyd, 30 R.W. 360 (Tribunal of Commerce Antwerp (1966))).

The international community likewise has rejected the United States position that it can impose its embargo on companies organized under the laws of a third country and doing business there on the ground that they are owned or controlled by United States nationals. This position abrogates the clear sovereignty of the country under whose law the corporation was created and where it maintains its principal office, and thus cannot be sustained under international law. The International Court of Justice squarely ruled to that effect in Barcelona Traction, Light and Power Co., Ltd. (Belgium v. Spain), 1970, I.C.J. Rep. 1, 3.

The position of various Latin American countries on this point is well known, and the vigorous protests of these States led in the 1970s to a limited relaxation of the United States policy towards third-country companies trading with Cuba. Other countries in the Western Hemisphere and Europe have long objected to United States efforts to impose the Cuban embargo upon native corporations on account of United States participation in their ownership. The European Community, in its 1982 protest, was also categorical on the point, and all the courts, with occasion to consider the matter, have rejected the United States position as incompatible with international law. (See, for example, Compagnie européenne des petroles S.A. v. Senor Nederland B.V. (District Court, The Hague, 1982), reprinted in 22 International Legal Materials 66). So unrelenting has been the United States assertion of jurisdiction on this basis that no less than 18 countries, including many of the main trading partners of the United States, have felt compelled to protect

their sovereign jurisdictions by the adoption of legislation authorizing their executives to order companies established under their laws to disregard United States embargo directives.

Notwithstanding the clear and emphatic consensus of the international community on this issue, the United States continues to assert - and to exercise - jurisdiction over third-country companies simply because they are substantially owned or controlled by United States companies. The United States prohibits these third-country companies from engaging in a wide range of transactions with Cuba, including making investments in Cuba, financing Cuban trade activities or entering into joint ventures with Cuban companies. The United States also requires these third-country companies to seek United States Treasury Department licences in order to engage in import-export transactions with Cuba and prohibits any use of United States dollar accounts even in those export-import transactions it licenses. Moreover, the United States prohibits the foreign branches of United States companies from engaging in any trade with Cuba.

The United States assertion of world-wide jurisdiction over dollar denominated bank accounts and dollar denominated trade is perhaps the most extreme of the United States' assertions of extraterritorial jurisdiction, as well as among the most insidious, given the prevalent use of the United States dollar in international trade. In its embargo against Cuba, the United States has purported to prohibit foreign banks wholly owned by foreign nationals and operating entirely on foreign soil from maintaining dollar denominated accounts for Cuba or conducting dollar denominated trade transactions involving Cuba - even when the source of the dollar credits has nothing to do with the United States, United States nationals or United States-origin goods.

When the United States first attempted to impose this prohibition on Latin American banks in the 1960s, diplomatic protests ensued. So clearly lacking in legal authority is this position that the United States, expressly anticipating its rejection by the international community, sought in other more recent embargo programmes only to restrain dollar transactions by foreign branches of United States banks. Even that far more limited claim, however, was rejected as incompatible with the sovereignty of the host country. (See Libyan Arab Foreign Bank v. Bankers Trust Co., [1988] 1 Lloyd's L. Rep. 259, and Libyan Arab Foreign Bank v. Manufacturers Hanover Trust Co. (No. 2), [1989] 1 Lloyd's L. Rep. 608). None the less, the threat of the United States imposing its will by freezing unrelated assets of the foreign banks in the United States has been a potent as well as unlawful weapon in the continuing efforts of the United States to disrupt the commercial and financial relations of Cuba with third countries.

The attempt by the United States to secure extraterritorial compliance, lacking jurisdictional foundation, also is objectionable because it seeks to compel third-country participation in an embargo pursued for an unlawful purpose: coercing Cuba into adopting an economic and political system more to the liking and advantage of the United States. As stated in the Declaration

on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted in 1970 by the General Assembly without dissent:

> "No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are in violation of international law.
>
> "No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind ..."

The same clear prohibition, which emanates from the Charter of the United Nations and is universally acknowledged to have attained the status of binding international law, has been repeated and reaffirmed in numerous other resolutions of the General Assembly, and in other international instruments such as, for example, the Vienna Convention on the Law of Treaties, the General Agreement on Tariffs and Trade and the Charter of the Organization of American States.

It cannot be doubted that the intensity and comprehensive character of the United States embargo amounts to economic coercion. Nor can it be doubted from the historical record or from the United States' unabashed explanations for continuing its embargo today that the purpose of its unparalleled economic coercion against Cuba is "the subordination of the exercise of its sovereign rights and to secure from it advantages".

The embargo, both in its direct and in its extraterritorial respects, also violates the treaty obligations of the United States. The General Agreement on Tariffs and Trade, to which both the United States and Cuba are parties, prohibits a country from imposing a trade embargo except "when necessary for the protection of its essential security interests". Neither now nor ever has it been possible credibly to claim that Cuba poses a threat to the national security of the United States.

Thus, both because of its extraterritorial scope and its underlying purpose to coerce Cuba into abandoning the economic and political system it has freely chosen, the United States embargo violates the most basic principles of the United Nations and of international law. Notwithstanding some assessments currently in vogue about the positive implications of the new international situation for universal respect of the Charter of the United Nations and international law, the United States, in flagrant violation of the latter and far from withdrawing from its illegal conduct, has continued to intensify and expand its embargo against Cuba.

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THE FINANCIAL SITUATION OF THE UNITED NATIONS

Report of the Secretary-General

1. It is a matter of profound concern to me that, at a time the world community has entrusted to the United Nations new and unprecedented responsibilities, the Organization should continue to find itself on the brink of insolvency. I therefore feel compelled, once again, to draw to the attention of the General Assembly the stark reality that faces us today.

2. For the past six years, I have repeatedly warned Member States that failure to pay their assessed contributions, in full and on time, made bankruptcy a very real possibility. Notwithstanding my appeals, only a small fraction of the membership of the Organization have fulfilled their obligations in this regard.

3. As Chief Administrative Officer, it is evident to me that only prompt and decisive action by Member States can change the situation.

THE SITUATION IN 1991

4. As of 30 September 1991, unpaid assessed contributions to the regular budget totalled $723.5 million. Of this amount, $389.9 million was owed for the current year, and $333.6 million represented arrears for 1990 and prior years. At the same date, unpaid assessed contributions for peace-keeping operations totalled $518.2 million.

5. Throughout all of 1991 it was necessary to draw upon the cash reserves of the Organization (i.e., the Working Capital Fund and the Special Account), totalling some $236 million, to meet current operating requirements. By mid-August of this year, these cash reserves were completely exhausted. Consequently, from mid-August until mid-October, I was obliged to borrow from

the few peace-keeping funds which had cash in excess of their immediate requirements in order to meet both regular budget obligations and the cash requirements of other new peace-keeping operations.

6. In this connection, it should be noted that since 1957, the General Assembly, in its resolutions on the Working Capital Fund, has confirmed the authority of the Secretary-General to borrow, upon payment of interest, from other available funds in his custody. Such other funds have, however, been established for specific purposes separate from those of the regular budget. Thus, my predecessors and I have only been authorized to borrow from those other funds to the extent that they have cash not immediately required for the purposes for which they were established. Moreover, in the exercise of his fiduciary responsibility, the Secretary-General may only borrow on a temporary, i.e., day-to-day, basis and if reasonably prompt payment can been foreseen.

7. When I, albeit reluctantly, initiated the borrowing from available peace-keeping funds in mid-August, I had reason to believe that such borrowing would be limited in amount and duration, as a number of Member States had given me assurances that they would shortly make substantial payments against their outstanding contributions. Unfortunately, only a few of those assurances have been translated into action.

8. In mid-September 1991 I addressed urgent communications to the Foreign Minister of every Member State, describing the precarious financial situation of the Organization. In the case of the 51 Member States which had paid their regular budget contributions in full by that time, I expressed my appreciation for the steps they had taken. At the same time I appealed to the 108 Member States which still owed regular budget assessments to take urgent action to pay their outstanding debts in full by the end of September. Only six Member States complied with that request.

9. Since I sent this appeal, a number of Member States have made payments against their outstanding contributions to the regular budget and to peace-keeping operations. Although the funds which have been received were most welcome and urgently required, they have only been sufficient to allow me to repay the amounts borrowed from peace-keeping accounts for the regular budget and to meet regular budget requirements until the end of November. Unfortunately, however, the contributions received to date for some of the new peace-keeping operations are not sufficient to meet their daily operational requirements. Accordingly, it will continue to be necessary to borrow from other peace-keeping accounts to cover the needs of these operations.

CONCLUSION

10. It is clear from the foregoing that in the present circumstances, prompt repayment of the internal borrowings already undertaken is far from assured. Moreover, unless substantial contributions are received shortly, the cash required to meet regular budget obligations and those of certain new

peace-keeping operations will exceed the funds available from peace-keeping accounts.

11. At that point, my capacity to resort to internal borrowing will be exhausted. The Organization will be insolvent and unable to meet its commitments to Member States and to staff.

12. We should all be fully aware of the political, substantive and managerial impact of such a state of affairs. Even more important, however, is the impact in human terms - on the staff of this Organization and equally, on the untold number of human beings around the world whose lives are directly and significantly affected by many of the important activities being carried out by the United Nations today.

13. The obvious step that would make it possible to avoid this situation would be the payment, by the Member States concerned, of substantial amounts of their outstanding contributions to the regular budget and to peace-keeping operations.

14. Another means of providing the necessary funds would be advance payments against future assessments by those Member States which are in a position to do so. Some Member States did this at the end of 1987 and again at the end of 1988. Such steps, however, only postpone the problem for a short while; they do not solve it. Moreover, the Organization would be placed in the position of relying yet again on those Member States which meet their legal obligations to mitigate the damage caused by those Member States which fail to do so.

15. My predecessors and I have, on more than one occasion, requested the authority to borrow commercially. These requests have been consistently rejected by the General Assembly, most recently in 1987, and for that reason, I have not persisted in that proposal. I must point out, however, that several of the specialized agencies of the United Nations, which have comparable memberships, have been given that authority and have, indeed, been obliged to resort to commercial borrowing over the past two years.

16. Even if the state of insolvency can be avoided by one or more of the options outlined above, such a result must be recognized as, at best, a short-term solution. It would still require Member States to work together earnestly to find a viable, durable, long-term solution to this perennial problem.

17. In the light of the new tasks entrusted to the United Nations, I consider it incumbent upon the membership to provide the Organization with the means to meet these challenges. Talk of a new era of cooperation and commitment to the goals of the Charter will remain ill-founded as long as the ability of the Organization to fulfil its growing responsibilities is undermined by the financial crisis. In the present favourable international climate, I urge the Member States not to deprive the United Nations of its chance to flourish and to serve the great purposes for which it was founded.

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FINANCIAL REPORTS AND AUDITED FINANCIAL STATEMENTS, AND REPORTS OF THE BOARD OF AUDITORS

Question of unliquidated obligations

Report of the Advisory Committee on Administrative and Budgetary Questions

1. The Advisory Committee on Administrative and Budgetary Questions has considered the Secretary-General's report on the question of unliquidated obligations (A/46/404), prepared pursuant to General Assembly resolution 45/235 of 21 December 1990. During its consideration of the report, the Advisory Committee met with representatives of the Secretary-General.

2. In its audit of the accounts of the Organization for the biennium 1988-1989, the Board of Auditors had noted that financial regulations 4.3 and 4.4 had not been complied with in full in respect of certain obligations that had arisen during the preceding biennium. In effect, certain large obligations outstanding at the end of the biennium 1986-1987, which could not be liquidated during the ensuing 12-month period, remained outstanding as at 31 December 1988. These charges were then transferred to accounts payable instead of being cancelled or transferred as an obligation against current appropriations, as required by financial regulation 4.4.

3. In its comments on the report of the Board of Auditors, the Advisory Committee had stated that "a solution to the problem created by the new budgetary process would be for the Administration to submit to the General Assembly an appropriate amendment to financial regulation 4.4".

4. The Advisory Committee recalls that in its resolution 45/235, the General Assembly reaffirmed the importance of strict compliance with financial regulations and rules on the subject of unliquidated obligations, and

requested the Secretary-General, in the light of his experience in implementing the new budget process and in the context of the recommendations of the Board of Auditors, to analyse outstanding issues on the subject and to submit a thorough report to the Assembly at its forty-sixth session.

5. In his report (A/46/404, para. 12 (a)), the Secretary-General has proposed that one possible way to resolve the situation would be that, for those projects which have been identified as being of a multi-year nature, appropriated funds should be placed in a separate account, allowing unexpended balances to be carried forward into succeeding bienniums until the projects are completed. The Secretary-General has also proposed that certain contracts, which cannot be fully liquidated within 12 months of the end of the biennium to which they relate, be brought to the attention of the General Assembly which, in turn, could authorize waiving of financial regulation 4.4.

6. However, neither the report nor the additional information supplied orally by the representatives of the Secretary-General during the Committee's consideration of the report provides sufficient analyses as to why it is not possible to discharge valid legal obligations within 12 months following the end of the financial period to which they relate. Until there is a more detailed analysis providing information as to why, advance planning of anticipated cost and duration notwithstanding, certain projects cannot be completed within the projected period, the Advisory Committee, in view of General Assembly resolution 45/235, is unable to support the proposals outlined in the Secretary-General's report.